

Remarks

The preceding amendment and following remarks are submitted in response to the Official Action of the Examiner mailed February 28, 2003. Claims 1-22 remain pending in the application. Entry of this Amendment and reconsideration by the Examiner to that end is respectfully requested.

The undersigned would like to thank the Examiner (and his supervisor) for the courtesies extended during the telephonic interview of March 26, 2003. During the interview, it appeared that the Examiner did not fully considered Applicant's Amendment filed on December 18, 2002. As such, the Examiner requested that Applicants file a Request for Reconsideration to have the previous Amendment fully considered. In view of the foregoing, Applicants respectfully request that the Examiner reconsider the Amendment filed on December 18, 2002.

In addition, Applicants would like to address a few new issues raised in the Official Action mailed February 28, 2003. In paragraph 2 of the Office Action, the Examiner rejected claims 1-14, 15-19 and 22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Regarding claim 1, the Examiner states that the phrase "a polarization controlled optical energy source" renders the claim indefinite. The Examiner states that the sole recitation of a laser source element and a polarization medium in the claim fails to conform any clear polarization control optical energy source to further limit the invention.

After careful review, Applicants must respectfully disagree. As noted during the above-

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referenced telephonic interview, claim 1 recites: a laser source element that produces a light output that has one and/or both of at least two polarization states; and a polarization medium positioned in proximal relation to the laser source element for polarizing the light output in a third polarization state that selects and attenuates each of the at least two polarization states equally or substantially equally. Clearly, claim 1 recites structure that produces “a polarization controlled optical energy source”, as recited in the preamble of claim 1.

As noted in Applicant’s Amendment filed December 18, 2002, the essential inquiry pertaining to the definiteness of claim language is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. The definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made (see MPEP § 2173.02). Also, and as noted in *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971), claim breadth is not to be equated with indefiniteness. If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph. (see MPEP § 2173.04). In the present case, claim 1 is broad. However, claim 1 recites specific structure including a laser source element and polarization medium, wherein the polarization medium is positioned in proximal relation to the laser source element for polarizing the light output in a third polarization state that selects and attenuates each of the at least two polarization

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states equally or substantially equally.

During the telephonic interview, the Examiner also pointed to the language “a laser source element that produces a light output that has one and/or both of at least two polarization states”, recited in claim 1. The Examiner questioned whether this language would cover a single mode laser that produces a light output that always has a single polarization state. To provide further clarity, the undersigned agreed to amend claim 1 to recite “a laser source element that produces a light output that has at least two polarization states”. As noted in the previous office action, as typically constructed, laser source elements such as VCSELs often switch polarization states *and frequently emit light simultaneously from multiple polarization states*. Thus, claim 1, as amended, is intended to cover any laser source element that emits at least two polarization states, at least some of the time. In view of the foregoing, Applicants believe that claim 1, and dependent claims 2-14, fully comply with 35 U.S.C. 112, second paragraph.

In paragraph 4 of the Office Action, the Examiner rejected claims 1, 2, 4-7, 10-12, 15-19 under 35 U.S.C. §102(e) as being anticipated by Davis et al. (U.S. Patent No. 6,069,905). Applicants respectfully disagree with this rejection. As noted in the Amendment filed on December 18, 2002, claim 1 recites:

1. (Amended) A polarization controlled optical energy source comprising:
  - a laser source element that produces a light output that has one and/or both of at least two polarization states; and
  - a polarization medium positioned in proximal relation to the laser source element for polarizing the light output in a third polarization state that [selecting and attenuating] selects and attenuates each of the at least two polarization states equally or substantially equally.

As can be seen, nothing on Davis et al. suggests a polarization medium positioned in proximal relation to the laser source element for polarizing the light output in a third polarization state that selects and attenuates each of the at least two polarization states equally or substantially equally.

Instead, Davis et al. appear to minimize any polarization effects on the reflected and transmitted light. For example, Davis et al. state: “[t]he tilted window has a metallic coating for partial reflection and for minimizing polarization effects on reflected and transmitted light.” (Davis et al., Abstract) Further, “[a]t the same time, the lateral extent of the thick dielectric must be minimized, because the optical transmission of such a thick coating will exhibit significant polarization selectivity.” (Davis et al., column 3, lines 6-9). And, “[a]ny tilted reflector results in some polarization sensitivity; however, an appropriate thickness and proper choice of materials of the metallic coating on window 37 minimizes the polarization effects.” (Davis et al., column 4, line 67 through column 5, line 3). Thus, Davis et al. appear to minimize any polarization effects on the reflected and transmitted light. In addition, Applicants would like to point out that polarization selectivity in Davis et al. does not mean polarizing the light output in a third polarization state that selects and attenuates each of the at least two polarization states equally or substantially equally, as recited in claim 1. Rather, in David et al., polarization selectivity appears to mean selecting one polarization state over another. In view of the foregoing, Applicants believe that claims 1, 2, 4-7, and 10-12, are clearly patentable over Davis et al. Independent claims 15, 21 and 22 have been amended to include a similar limitation to claim 1. As such, claim 15-19, and 21-22 are also believed to be clearly patentable over Davis et al.

In paragraph 6 of the Office Action, the Examiner appears to have rejected claims 3, 8, 9, 13,

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14, 20 and 22 under 35 U.S.C. §103(a) as being unpatentable over Davis et al. in view of Jewell et al. (U.S. Patent No. 5,331,654). After careful review, and as noted in the Amendment filed on December 18, 2002, Applicants believe that this rejection is improper because Davis et al. is disqualified as prior art under 35 U.S.C. §103.

As point out in the Amendment filed on December 18, 2002, Davis et al. was filed on December 31, 1997, and issued on May 30, 2000. The present application was filed on May 23, 2000. As such, Davis et al. would only qualify as prior art under 35 U.S.C. §102(e). In view thereof, the Examiner's rejection of claims 3, 8, 9, 13, 14, 20 and 22 must have been made under 35 U.S.C. §102(e)/103. However, 35 U.S.C. § 103(c) states:

*35 U.S.C. 103. Conditions for patentability; non-obvious subject matter.*

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(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, which includes the present application. The subject matter of Davis et al. and the subject matter of the present application were, at the time the invention was made, owned by or subject to an obligation of assignment to a common assignee, namely, Honeywell International Inc., of Morristown, New Jersey, U.S.A. In view of the foregoing, Davis et al. is disqualified as prior art under 35 U.S.C. §103(c), and claims 3, 8, 9, 13, 14, 20 and 22 are all believed to be in condition for allowance.

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Having thus addressed the Examiner's grounds for rejections, Applicants believe pending claims 1-22 are clearly in condition for allowance. Reconsideration to that end is respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at 612-677-9050.

Respectfully submitted,

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By their attorney,

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